

AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1528

Introduced by Assembly Member Jones

February 22, 2005

~~An act to amend Section 47 of the Civil Code, relating to privileged communications.~~ *An act to add Section 1940.05 to the Civil Code, relating to tenancy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1528, as amended, Jones. ~~Privileged communications: harassment of tenants~~ *Tenancy: agency.*

Existing law defines and regulates principals and their agents. Existing law provides that any person having capacity to contract may appoint an agent and that any person may be an agent.

This bill would specify that the law of agency applies to the relationship between a landlord or owner and his or her agent, and would prohibit an inference from being drawn regarding the inapplicability of the law of agency from the presence or absence of a reference to an agent in specified provisions. The bill would state that its provisions are declaratory of existing law.

~~Existing law, with specified exceptions, makes privileged any communication made in official proceedings, including judicial proceedings.~~

~~This bill would add to those exceptions, otherwise privileged communications regarding the right of a landlord to notify a tenant of a change in the terms of a lease, written notice by either party to terminate a month-to-month tenancy or hiring of a room by a lodger, written notice by a landlord to terminate any other periodic residential tenancy, a notice of unlawful detainer, or notice of the removal of a~~

holdover tenant in a manufactured home, mobile home, floating home, or related real property. The bill would also state the purpose of these exceptions is to overturn a specified decision of a court of appeal.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 47 of the Civil Code is amended to~~
2 ~~read:~~
3 ~~SECTION 1. Section 1940.05 is added to the Civil Code, to~~
4 ~~read:~~
5 ~~1940.05. (a) The law of agency is applicable to the~~
6 ~~relationship between a landlord or owner and his or her agent,~~
7 ~~and no inference shall be drawn regarding the inapplicability of~~
8 ~~the law of agency from the presence or absence of specific~~
9 ~~reference to an agent in the provisions of this chapter.~~
10 ~~(b) This section is declaratory of existing law.~~
11 ~~47. A privileged publication or broadcast is one made:~~
12 ~~(a) In the proper discharge of an official duty.~~
13 ~~(b) In any legislative proceeding, judicial proceeding, in any~~
14 ~~other official proceeding authorized by law, or in the initiation or~~
15 ~~course of any other proceeding authorized by law and reviewable~~
16 ~~pursuant to Chapter 2 (commencing with Section 1084) of Title 1~~
17 ~~of Part 3 of the Code of Civil Procedure, except as follows:~~
18 ~~(1) An allegation or averment contained in any pleading or~~
19 ~~affidavit filed in an action for marital dissolution or legal~~
20 ~~separation made of or concerning a person by or against whom~~
21 ~~no affirmative relief is prayed in the action shall not be a~~
22 ~~privileged publication or broadcast as to the person making the~~
23 ~~allegation or averment within the meaning of this section unless~~
24 ~~the pleading is verified or affidavit sworn to, and is made without~~
25 ~~malice, by one having reasonable and probable cause for~~
26 ~~believing the truth of the allegation or averment and unless the~~
27 ~~allegation or averment is material and relevant to the issues in the~~
28 ~~action.~~
29 ~~(2) This subdivision does not make privileged any~~
30 ~~communication made in furtherance of an act of intentional~~
31 ~~destruction or alteration of physical evidence undertaken for the~~
32 ~~purpose of depriving a party to litigation of the use of that~~

1 evidence, whether or not the content of the communication is the
2 subject of a subsequent publication or broadcast which is
3 privileged pursuant to this section. As used in this paragraph,
4 “physical evidence” means evidence specified in Section 250 of
5 the Evidence Code or evidence that is property of any type
6 specified in Chapter 14 (commencing with Section 2031.010) of
7 Title 4 of Part 4 of the Code of Civil Procedure.

8 (3) This subdivision does not make privileged any
9 communication made in a judicial proceeding knowingly
10 concealing the existence of an insurance policy or policies.

11 (4) A recorded lis pendens is not a privileged publication
12 unless it identifies an action previously filed with a court of
13 competent jurisdiction which affects the title or right of
14 possession of real property, as authorized or required by law.

15 (5) This subdivision does not make privileged any
16 communication authorized by Section 827, 1946, 1946.1, or
17 1946.5 of this code or by Section 1161 or 1161a of the Code of
18 Civil Procedure.

19 (6) This subdivision does not make privileged any
20 communication made unlawful by a local ordinance regarding
21 the regulation of rents, termination of tenancy, eviction, or
22 harassment of residential tenants, or discrimination against
23 residential tenants.

24 (c) In a communication, without malice, to a person interested
25 therein, (1) by one who is also interested, or (2) by one who
26 stands in such a relation to the person interested as to afford a
27 reasonable ground for supposing the motive for the
28 communication to be innocent, or (3) who is requested by the
29 person interested to give the information. This subdivision
30 applies to and includes a communication concerning the job
31 performance or qualifications of an applicant for employment,
32 based upon credible evidence, made without malice, by a current
33 or former employer of the applicant to, and upon request of, one
34 whom the employer reasonably believes is a prospective
35 employer of the applicant. This subdivision authorizes a current
36 or former employer, or the employer’s agent, to answer whether
37 or not the employer would rehire a current or former employee.
38 This subdivision shall not apply to a communication concerning
39 the speech or activities of an applicant for employment if the
40 speech or activities are constitutionally protected, or otherwise

1 ~~protected by Section 527.3 of the Code of Civil Procedure or any~~
2 ~~other provision of law.~~

3 ~~(d) (1) By a fair and true report in, or a communication to, a~~
4 ~~public journal, of (A) a judicial, (B) legislative, or (C) other~~
5 ~~public official proceeding, or (D) of anything said in the course~~
6 ~~thereof, or (E) of a verified charge or complaint made by any~~
7 ~~person to a public official, upon which complaint a warrant has~~
8 ~~been issued.~~

9 ~~(2) Nothing in paragraph (1) shall make privileged any~~
10 ~~communication to a public journal that does any of the following:~~

11 ~~(A) Violates Rule 5-120 of the State Bar Rules of Professional~~
12 ~~Conduct.~~

13 ~~(B) Breaches a court order.~~

14 ~~(C) Violates any requirement of confidentiality imposed by~~
15 ~~law.~~

16 ~~(e) By a fair and true report of (1) the proceedings of a public~~
17 ~~meeting, if the meeting was lawfully convened for a lawful~~
18 ~~purpose and open to the public, or (2) the publication of the~~
19 ~~matter complained of was for the public benefit.~~

20 ~~(f) Paragraphs (5) and (6) of subdivision (b) are declarative of~~
21 ~~existing law and are intended to overrule the holding of the court~~
22 ~~of appeal in Action Apartment Assn., Inc. v. City of Santa~~
23 ~~Monica (2004) 123 Cal. App. 4th 47.~~